

Getting back money from a mistaken electronic transfer of money

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I. Introduction

1. Electronic transfers of money, such as bank transfers, are commonplace today. Mobile payment services such as PayLah! have made such transfers even easier – all you need is the other party’s mobile phone number. But what if you key in the wrong bank account number or phone number, which causes you to pay the wrong person? Can you get your money back?
2. In this case, the law will generally find that the person who received the money was “unjustly enriched”. Therefore, that person would have to repay the money, i.e., “make restitution”. That person may also be guilty of the crime of dishonest misappropriation. This article will explore your chances of getting your money back, as well as whether it is practical to pursue legal action.

II. When a recipient who has not yet spent any money refuses to repay

3. Let us begin from the most basic scenario. You transferred a few hundred dollars to the wrong person. You realised this shortly afterwards, and immediately texted the recipient. If you are lucky, the recipient might be willing to repay you. But not all recipients repay. One Grab driver who received a mistaken transfer of more than \$30,000 from Grab refused to repay even after being contacted, and subsequently spent around \$23,000 of the money.¹ He was found guilty of dishonest misappropriation.² In another case, a man PayLah-ed a carpenter, but the money went to the phone number’s previous owner instead.³ The recipient initially did not consent for the bank to reverse the transaction, but the bank eventually managed to resolve the issue.⁴

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¹ Lydia Lam, “Jail for Grab driver who refused to return S\$33,600 wrongly transferred to him by Grab”, *Channel NewsAsia* (23 May 2019) <<https://www.channelnewsasia.com/singapore/grab-driver-refused-return-money-transferred-bank-account-jail-880541>> (accessed 4 October 2021).

² *Ibid.*

³ Jonathan Lim, “S’porean man transferred S\$700 via PayLah! to carpenter, but mobile number was someone else’s before”, *Mothership* (3 November 2018) <<https://mothership.sg/2018/11/can-i-reverse-accidental-mistake-paylah-paynow-transfer/>> (accessed 4 October 2021).

⁴ *Ibid.*

4. In such cases, your first step should be to inform the bank.⁵ If the bank is unable to assist, you should make a police report.⁶ Like the Grab driver, such a recipient would generally be guilty of dishonest misappropriation of property, as provided for in Illustration (g) of s 403 Penal Code.⁷
5. But if the Public Prosecutor (“PP”) decides not to prosecute the matter, you may nonetheless yourself sue the recipient. Under the law of unjust enrichment, the recipient must return your money if:⁸
 - (a) the recipient has received a benefit (i.e., he has been enriched);
 - (b) the enrichment is at your expense;
 - (c) it is unjust to allow the recipient to retain the enrichment; and
 - (d) there are no defences available to the recipient.
6. Here, the first two requirements are met – the recipient had received a monetary benefit at your expense. Requirement (c) is also met, as a payment caused by a mistake is an unjust factor.⁹ Here, the mistake is one of fact – you were mistaken about the bank or phone number that you had keyed in.
7. The fact that you were careless does not itself prevent you from getting your money back.¹⁰ Carelessness undermines your right to restitution only if it is extreme.¹¹ Where you did not subjectively contemplate or perceive the risk of making the mistaken payment, you may still get your money back.¹²
8. Lastly, assuming you had notified the recipient before he had spent any money, no defence would be open to the recipient.¹³ Hence, in this scenario, the elements of unjust enrichment are satisfied, and you may sue the recipient to return the money.

⁵ *Ibid*; DBS Bank Website <<https://www.dbs.com.sg/personal/support/bank-local-wrong-funds-transfer.html>> (accessed 4 October 2021).

⁶ *Ibid*.

⁷ Penal Code (Cap 224, 2008 Rev Ed) s 403, *Explanation 2, Illustration (g)*.

⁸ *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd* [2011] 3 SLR 540 (“*Skandinaviska*”) at [110].

⁹ *Skandinaviska*, *supra* n. 8, at [110].

¹⁰ *Banque Financière de la Cité v Parc (Battersea) Ltd* [1999] 1 AC 221 at 235; *Pitt v Holt* [2013] 2 AC 108 at [114], *Skandinaviska*, *supra* n. 8, at [137]–[138].

¹¹ *Skandinaviska*, *supra* n. 8, at [137]–[138].

¹² *Ibid*.

¹³ See Part III of this article, especially paragraphs 16–18.

9. The following section will discuss situations where the recipient might have a defence.

III. When a recipient spends money without being aware of the mistaken transfer

10. Matters become more complex when the recipient has spent some money on the assumption that he had additional available funds, without being aware of the mistaken transfer itself. Here, the law might find that the recipient had spent his money in such a way that it is unfair for the recipient to make full repayment.

11. To avoid repayment, the recipient must show that:¹⁴

- (a) The enrichment caused the recipient to spend the money; and
- (b) The recipient spent the money in good faith.

Such a recipient would have “changed his position”, such that it is inequitable to require the recipient to repay the money.¹⁵ This is known as the “change of position” defence.

12. This defence recognises that people spend based on how much they think they have.¹⁶ It was the error of the person paying which caused the recipient to think that he had additional available funds, causing him to spend more than usual. Hence, the recipient would be prejudiced if he were required to return the money spent.¹⁷

A. *The enrichment caused the recipient to spend the money*

13. First, the recipient must show that he would not have spent the money, but for the payment that he received.¹⁸ In other words, the expenditure must be caused by the enrichment.

14. Applying this requirement, a person who receives a mistaken payment of \$500 and proceeds to spend it on an expensive lunch would have changed his position.¹⁹ But if he enjoys such lavish lunches regularly, then the cost of that meal would not be a change

¹⁴ *Management Corporation Strata Title Plan No 473 v De Beers Jewellery Pte Ltd* [2002] 1 SLR(R) 418 (“*De Beers*”) at [35]–[36]; Tang, *supra* n. 6, at [11.016].

¹⁵ *De Beers*, *supra* n. 14, at [36].

¹⁶ Tang Hang Wu, *Principles of the Law of Restitution in Singapore* (Singapore Academy of Law, 2019) (“Tang”) at [11.010]. See also *id.*, at [11.032], citing Steve Hedley, *Restitution: Its Division and Ordering* (London: Sweet & Maxwell, 2001) at p 27.

¹⁷ *Ibid.*

¹⁸ See *Skandinaviska*, *supra* n. 8, at [140], and *De Beers*, *supra* n. 7, at [36].

¹⁹ Tang, *supra* n. 14, at [11.016].

of position – he would probably have spent that much on lunch even without receiving the \$500.²⁰

15. Another way of expressing this requirement is to ask whether the change of position was extraordinary by reference to the recipient's circumstances.²¹ For instance, a holiday to Thailand costing \$3,000 would be extraordinary for a frugal person, but perhaps not for a person who travels every year. If both had received a mistaken payment of \$3,000 and proceeded to go on that holiday, the former would have had a change of position, but not the latter.²²

B. *The recipient must have changed his position in good faith*

16. Suppose the recipient spends money despite knowing about the mistaken payment. Perhaps he had seen or even replied to your message. However, such a recipient cannot rely on the defence because he would not be acting in good faith.²³ Therefore, the recipient here will not be able to retain the money.
17. However, even if you did not inform the recipient, the court will not necessarily assume that the recipient knew about the mistaken payment. A person who is less hands-on with his finances may look at his balance, innocently think that he had more money than he remembered, and thus decide to pamper himself.²⁴ Such behaviour would not constitute bad faith, which means the recipient can retain the money.
18. Practically speaking, therefore, you should inform the recipient immediately upon discovering the mistaken payment. This will shorten the timeframe where the recipient may change his position in good faith.

IV. Practical considerations for situations involving smaller amounts of money

19. The above would be relevant in getting repayment for mistaken transfers involving larger monetary amounts. For mistaken PayLah! transfers, however, the monetary amount involved is usually relatively small, probably around a few hundred dollars at

²⁰ *Ibid.*

²¹ Tang, *supra* n. 16, at [11.017].

²² *Ibid.*

²³ *Jones v Churcher* [2009] EWHC 722 (QB) at [87]–[89]. See also Tang, *supra* n. 16, at [11.040(d)].

²⁴ Tang, *supra* n. 16, at [11.01].

most. Here, you should consider whether the court fees will exceed your claim amount. The Small Claims Tribunal, which provides affordable fees, has no power to hear unjust enrichment claims. The cheapest alternative court is the Magistrate's Courts, but the fees are \$250 *per day* of open court hearings after the first day.²⁵ Unless you are confident that the dispute requires only one day of hearings (in which case there are no hearing fees),²⁶ you may wish to consider cheaper solutions.

20. If the recipient is willing to negotiate, mediation is a viable option. A neutral third party will facilitate discussions for you and the recipient to arrive at a mutually acceptable solution.²⁷ An alternative is conciliation, where a judge facilitates the negotiations.²⁸ For claims under the Magistrate's Courts, conciliation is free of charge.²⁹
21. If the above fails, and the PP decides not to prosecute the recipient for dishonest misappropriation, you may file a Magistrate's Complaint to prosecute the recipient on your own.³⁰ You might succeed if the facts are clear-cut, like in the Grab driver case.³¹ However, you must prove beyond reasonable doubt that the recipient was dishonest,³² which may be difficult in less straightforward cases. An example could be where the recipient had honestly (without knowledge of the mistaken transfer) spent money because he genuinely thought he had more money than expected.³³ Consider also that the PP may have decided not to prosecute the recipient because the PP found it difficult to establish the recipient's guilt.

²⁵ Rules of Court (Cap 322, 2014 Rev Ed) O 90A r 1.

²⁶ *Ibid.*

²⁷ An Overview of Mediation, State Courts Website

<https://www.statecourts.gov.sg/cws/Mediation_ADR/Pages/An-Overview%20of%20Mediation.aspx> (accessed 4 October 2021).

²⁸ An Overview of Conciliation, State Courts Website

<https://www.statecourts.gov.sg/cws/Mediation_ADR/Pages/An%20Overview%20of%20Conciliation.aspx> (accessed 4 October 2021).

²⁹ Conciliation – Frequently Asked Questions, State Courts Website

<https://www.statecourts.gov.sg/cws/Mediation_ADR/Documents/Conciliation%20-%20Mar21.pdf> (accessed 4 October 2021).

³⁰ An Overview of Magistrate's Complaints, State Courts Website

<<https://www.statecourts.gov.sg/cws/FilingMagistrateComplaint/Pages/Magistrate-Complaints-Overview.aspx>> (accessed 4 October 2021).

³¹ See paragraphs 3–4 of this article.

³² Penal Code (Cap 224, 2008 Rev Ed) s 403.

³³ This is the same scenario as contemplated by the change of position defence. See Part III of this article for the discussion of the defence.

V. Conclusion

22. Overall, legal action should preferably be your last option. You could first take practical actions like notifying the recipient as soon as possible, informing the bank, and reporting to the police. Other consensual options such as mediation and conciliation may also help to resolve the problem.

 23. If the above solutions do not work, you should check whether the cost of pursuing an action in unjust enrichment may eclipse the amount of money you are claiming for. If it does, you may wish to privately prosecute the recipient. But bear in mind that for less straightforward cases, it may be difficult to prove the recipient's dishonesty beyond a reasonable doubt.
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